

# Exhibit C

**From:** Molly Stengel  
**To:** Smith, Samuel; Schroedle, Donna  
**Cc:** Dan Walden  
**Subject:** RE: Kmart 4016 tower rusting and needs replacement  
**Attachments:** K-Mart Cooling Tower Repair Revised 10-15-18.pdf

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Sam,

We have contacted a highly-regarded mechanical contractor with experience dealing with units of this size and type, and they were able to provide repair solutions. Please see their repair quotes attached. Because the unit can be repaired, this is a tenant expense.

Please let me know if you have any questions.

Thanks,  
Molly

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**From:** Smith, Samuel <Samuel.Smith@searshc.com>  
**Sent:** Friday, November 9, 2018 3:45 PM  
**To:** Schroedle, Donna <Donna.Schroedle@searshc.com>; Molly Stengel <mstengel@hughesdevelopment.com>; Dan Walden <dwalden@hughesdevelopment.com>  
**Cc:** Smith, Samuel <Samuel.Smith@searshc.com>  
**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Has there been an update to this? There is a crack in the hot water basin. We are losing treated water that is coming from the water treatment to the tower.

**Sam Smith**  
**District Facility Manager**  
**Dist 186 North Carolina, South Carolina**  
**Phone 704-674-9524**  
**Fax 704-731-0721**  
<http://facilities.intra.sears.com>

For Vendor Needs Call:  
Risk Management 800-727-0121 For incidents/accidents personal/property >\$500  
Phoenix Technologies 877-579-4917 (Kmart/Sears EMS)  
Oakleaf 888-625-5323 Waste Issues  
Phone Help Desk Sears 800-573-1219 or 800-998-1500  
Phone Kmart-Crosscom 800-883-5685  
ADT 800-877-0211 or Protection One 855-471-7327 Store Alarm  
Schindler 800 225 3123 Elevator or Escalator  
Orkin 800-241-1666 Pest control

**From:** Schroedle, Donna

**Sent:** Thursday, August 30, 2018 9:12 AM

**To:** Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>; Molly Stengel  
<[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>; Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>

**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Molly,

Please kindly let us know what you plan to do with this. Nothing has been done thus far.

Best,

Donna

Donna Schroedle | Asset Manager  
AL, DE, DC, GA, IN, KY, MD, MS,  
NC, NJ, PA, SC, OH, TN, VA, WV  
Sears Holdings Corporation  
3333 Beverly Road, BC-103A  
Hoffman Estates, IL 60179  
Voice - 847-286-5952  
Fax - 847-286-7976  
Email: [donna.schroedle@searshc.com](mailto:donna.schroedle@searshc.com)

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---

**From:** Smith, Samuel

**Sent:** Thursday, August 30, 2018 7:47 AM

**To:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>; Molly Stengel  
<[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>; Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>

**Cc:** Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>

**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Donna,

Have your received any update on this? Tower continues to lose water and is need of replacement. HVAC vendor has already indicated the parts are not available from Marley to replace the deteriorated parts.

**Sam Smith**

**District Facility Manager**

**Dist 186 Charlotte, Winston, Greensboro, Asheville, Greenville, Columbia,  
Wilmington/Myrtle Beach**

**Phone 704-674-9524**

**Fax 704-731-0721**

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Phoenix Technologies 877-579-4917 (Kmart/Sears EMS)

Oakleaf 888-625-5323 Waste Issues

Phone Help Desk Sears 800-573-1219 or 800-998-1500

Phone Kmart-Crosscom 800-883-5685

ADT 800-877-0211 or Protection One 855-471-7327 Store Alarm

Schindler 800 225 3123 Elevator or Escalator

Orkin 800-241-1666 Pest control

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**From:** Schroedle, Donna

**Sent:** Thursday, July 05, 2018 10:38 AM

**To:** Molly Stengel <[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>; Smith, Samuel

<[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>; Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>

**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Hi Molly,

I haven't heard anything more on the cooling towers. Please kindly provide us an update.

Best,

Donna

Donna Schroedle | Asset Manager

AL, DE, DC, GA, IN, KY, MD, MS,

NC, NJ, PA, SC, OH, TN, VA, WV

Sears Holdings Corporation

3333 Beverly Road, BC-103A

Hoffman Estates, IL 60179

Voice - 847-286-5952

Fax - 847-286-7976

Email: [donna.schroedle@searshc.com](mailto:donna.schroedle@searshc.com)

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**From:** Molly Stengel [<mailto:mstengel@hughesdevelopment.com>]

**Sent:** Tuesday, June 26, 2018 11:28 AM

**To:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>

**Subject:** RE: Kmart 4016 tower rusting and needs replacement

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Donna,

In looking at the Fifth Amendment for this store, I see where Kmart agreed to a maintenance contract for the cooling towers as well as to provide reports. Can you confirm you have the executed 5<sup>th</sup> Amendment for this store in your files?

Thanks,  
Molly

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**From:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>

**Sent:** Tuesday, June 12, 2018 9:37 AM

**To:** Molly Stengel <[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>; Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>

**Cc:** Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>

**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Thanks Molly. Sam can work with you on access.

Best,  
Donna

Donna Schroedle | Asset Manager  
AL, DE, DC, GA, IN, KY, MD, MS,  
NC, NJ, PA, SC, OH, TN, VA, WV  
Sears Holdings Corporation  
3333 Beverly Road, BC-103A  
Hoffman Estates, IL 60179  
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---

**From:** Molly Stengel [<mailto:mstengel@hughesdevelopment.com>]  
**Sent:** Tuesday, June 12, 2018 8:36 AM  
**To:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>; Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>  
**Cc:** Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>  
**Subject:** RE: Kmart 4016 tower rusting and needs replacement

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---

Hi Donna & Sam,

We would like to look at the units this Thursday. Should we ask for someone specific in the store to unlock the gate?

Thanks,  
Molly

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**From:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>  
**Sent:** Tuesday, June 12, 2018 8:56 AM  
**To:** Molly Stengel <[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>; Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>  
**Cc:** Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>  
**Subject:** RE: Kmart 4016 tower rusting and needs replacement

Molly,  
I don't see how the inspection reports would have anything to do with the rusting of the units. Unless the lease specifically states we need to provide, then we don't. I don't see in the lease that Kmart is obligated to do so.

Best,  
Donna

Donna Schroedle | Asset Manager  
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NC, NJ, PA, SC, OH, TN, VA, WV  
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3333 Beverly Road, BC-103A  
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Email: [donna.schroedle@searshc.com](mailto:donna.schroedle@searshc.com)

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---

**From:** Molly Stengel [<mailto:mstengel@hughesdevelopment.com>]  
**Sent:** Monday, June 11, 2018 3:53 PM  
**To:** Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>  
**Cc:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>; Dan Walden <[dwalden@hughesdevelopment.com](mailto:dwalden@hughesdevelopment.com)>  
**Subject:** RE: Kmart 4016 tower rusting and needs replacement

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Sam,

Thanks for your email. We would like to have someone out to look at the cooling towers this week. Can you please let us know of the available times to meet someone from Kmart to unlock the gate? In the meantime, can you please provide the Landlord with inspection reports from your maintenance provider?

Thanks,  
Molly

---

**From:** Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>  
**Sent:** Friday, June 08, 2018 10:11 PM  
**To:** Molly Stengel <[mstengel@hughesdevelopment.com](mailto:mstengel@hughesdevelopment.com)>  
**Cc:** Schroedle, Donna <[Donna.Schroedle@searshc.com](mailto:Donna.Schroedle@searshc.com)>; Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>  
**Subject:** FW: Kmart 4016 tower rusting and needs replacement

Molly,

The cooling towers at 4016 Kmart Greenville SC need replacing. They are beyond repair. The hot water basin is rusting out and can not be repaired as parts are not available according to the manufacture.

Please communicate the LL plans to address this issue. As I understand, Kmart handles repairs but the LL is responsible for replacements.

Based on the information I have receive, the tower can not be repaired.

Thanks.

**Sam Smith**

**District Facility Manager**

**Dist 186 Charlotte, Winston, Greensboro, Asheville, Greenville, Columbia,  
Wilmington/Myrtle Beach**

**Phone 704-674-9524**

**Fax 704-731-0721**

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Phone Kmart-Crosscom 800-883-5685

ADT 800-877-0211 or Protection One 855-471-7327 Store Alarm

Schindler 800 225 3123 Elevator or Escalator

Orkin 800-241-1666 Pest control

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**From:** Greg Ballenger [<mailto:gballenger@rsicarolina.com>]

**Sent:** Monday, June 04, 2018 1:19 PM

**To:** Smith, Samuel <[Samuel.Smith@searshc.com](mailto:Samuel.Smith@searshc.com)>

**Subject:** Kmart 4016 tower

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Sam,



Attached are a couple of pictures showing the rusted out areas on the cooling towers at 4016.

The rusted out section is part of the hot water basin of the tower. According to Marley this part is no longer available. Currently it is leaking water from this portion of the tower. This will continue to get worse until the hot water basin completely deteriorates.

Thanks

Greg Ballenger  
Refrigeration Services, Inc.  
864 292-0092

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NC Mechanical License # 28275, SC Mechanical Contractor # M113953, SC General Contractor # G120314  
TN Mechanical License # 71199, VA Contractor License # 2705164248  
P.O. Box 77319  
Greensboro, NC 27417  
24 Hour Service 855-761-HVAC(4822)  
Fax 855-327-4830

### QUOTE

Customer:	<u>Hughes Development Corporation</u>	Date:	<u>10/4/2018</u>
Site Address:	<u>Church St. Greenville SC</u>	Quote #:	<u>BH100418-E REV1</u>
Site Name:	<u>K-Mart Church Street</u>	Ref. WO Number:	<u></u>
Quote Contact:	<u>Dan Walden</u>		
Equipment Tag:	<u>Cooling Towers</u>	Model #:	<u>NC</u>
Manufacturer:	<u>Marley</u>	Serial #:	<u>245793-P13EG-2004</u>

**Scope of work to be performed:**

Provide all materials and labor to replace 4 exterior drift eliminators next to the hot deck on the towers, 2 side panels that have deteriorated, patch 2 minor spots in side panels and coat with galvanized paint ,replace one 10' section of 6" carbon steel pipe for the supply on the tower closest tower to the parking lot.

The Hoffman Mechanical Solutions, Inc. price for this work is: \$ 17,718.00

Price will remain firm for a period of 30 days. Hoffman Mechanical Solutions, Inc.'s normal working hours are from 8am to 5pm, Monday through Friday. Any work requested to be performed after normal working hours are subject to additional costs. On-site safety training and drug testing not included in quote unless noted. Payment terms shall be net 30 days after completion of project.

As a condition of this Proposal, all work performed by Hoffman Mechanical Solutions, Inc. shall be only in accordance with the Terms and Conditions, attached and incorporated herein by reference. In the event any terms of any other purchase order or project contract documents conflict with or add to the attached Terms and Conditions, those other terms are rejected by Hoffman Mechanical Solutions, Inc. Furthermore, this Proposal is contingent upon final approval of the Hoffman Credit Department and may be rescinded in the Company's sole discretion.

For North Carolina Only – Additional Taxes may apply. See NCDOR Form E-589Cl.

Quote Prepared By: Bob Hicks

Authorized By: \_\_\_\_\_

Customer P.O. \_\_\_\_\_

Date: \_\_\_\_\_

"Hoffman" shall mean Hoffman Mechanical Solutions, Inc. "Customer" shall mean the owner, contractor, or other party entering into this Agreement with Hoffman to purchase services and/or goods.

**1. Controlling Terms & Conditions:** This Agreement, upon Customer's acceptance, is limited to the terms and conditions stated herein, despite any additional or conflicting terms and conditions contained in any other purchase order, any other document presented by Customer, or any contract document between Customer and any third-party (i.e. an owner, other contractor, etc.), all of which additional or conflicting terms are hereby rejected by Hoffman. No waiver of, or modification to, these Terms and Conditions shall be valid, unless made in writing and signed by an authorized representative of Hoffman. The terms of any written proposal / quote made by Hoffman ("proposal") and these Terms and Conditions shall constitute the entire agreement of the parties.

**2. Acceptance:** Any Hoffman proposal expires if not accepted by Customer within thirty (30) days from the date of the proposal. Prices of goods are firm after acceptance provided the Customer releases the order within sixty (60) days of placing the order. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction. Customer is deemed to have accepted any Hoffman proposal, including these Terms and Conditions, when Customer either (a) receives and retains an acknowledgement from Hoffman without written objection for ten (10) days, (b) accepts delivery of all or any part of any goods ordered, (c) provides to Hoffman delivery / performance dates, shipping instructions, start-up instructions, or other instructions evidencing acceptance, (d) engages or directs Hoffman to begin performance of any services acquired, or (e) otherwise executes or assents to any proposal or these Terms and Conditions. If Customer accepts any proposal, without the addition of any other terms and conditions or any other Customer modification, Customer's order shall be deemed acceptance of the proposal subject solely to Hoffman's terms and conditions. If Customer's order is expressly conditioned upon Hoffman's acceptance or assent to terms and/or conditions other than those stated herein, return or acknowledgement of such order by Hoffman with Hoffman's Terms and Conditions attached or referenced serves as Hoffman's notice of objection to, and rejection of, Customer's terms and as Hoffman's counter-offer to provide goods and/or services in accordance with the proposal and Hoffman's Terms and Conditions. If thereafter Customer does not reject or object in writing to Hoffman within ten (10) days by written notice to Legal@hoffman-hoffman.com, Hoffman's counter-offer will be deemed accepted by Customer. In any event, Customer's acceptance of all or any part of any goods ordered will constitute Customer's acceptance of Hoffman's proposal subject to Hoffman's Terms and Conditions.

**3. Additional Services / Materials:** As work progresses, there may be a need for additional services or goods, which could not be anticipated at the time this Agreement was entered. Hoffman shall notify Customer of the description and price for such additional work or material, and if Customer authorizes Hoffman to proceed with the additional work or materials, the contract price and dates of completion shall be adjusted accordingly.

**4. Terms of Payment / Taxes:** Payment is due net thirty (30) days from date of Hoffman's invoice to Customer. Interest at the rate of 1 1/2% per month (or the highest interest rate allowed by applicable law, if lower) may be charged after the 30-day period until payment is received. Customer shall pay all costs of collection incurred by Hoffman including, but not limited to, reasonable attorneys' fees, collection fees and court costs. Hoffman may suspend all further services and transactions (regardless of their status) without liability if Customer's account is more than thirty (30) days past due or if Customer's credit, in the sole judgment of Hoffman, is impaired at any time. Partial invoices may be submitted for any portion of completed work and/or delivered materials. While risk of loss passes to Customer, Seller will have a purchase-money security interest in all goods (including any accessories and substitutions) purchased under this Agreement to secure payment in full of all amounts due Hoffman, and the underlying proposal, together with these Terms and Conditions, form a security agreement (as defined by the UCC.) Customer shall keep all goods purchased under this Agreement free of all taxes and encumbrances, shall not remove said goods from their original installation point and shall not assign or transfer any interest in said goods until all payments due Hoffman have been made. The purchase-money security interest granted herein attaches upon Hoffman's acceptance or acknowledgment of this Agreement and Customer's receipt of said goods, but prior to installation. Customer will have no rights to set off against any amounts which become payable to Hoffman under this Agreement or otherwise. Customer is responsible to pay in full for the services and/or goods provided by Hoffman regardless of whether such goods or services are funded for Customer pursuant to any extraneous contract and/or by an applicable project owner or contractor. Notwithstanding any Customer form or document to the contrary, Hoffman shall not release any rights to make a lien and/or bond claim, or other claim for damages, in connection with its work or anticipated work (including the sale of goods and/or services) until Hoffman has obtained payment in full for such work and any damages. Unless otherwise agreed by Hoffman in writing, Customer shall pay to Hoffman, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable in connection with the services and/or goods furnished hereunder.

**5. Shipments / Claims:** Any shipment of goods is at Customer's risk, f.o.b. factory, or if shipped from another location, f.o.b. point of shipment, with charges either allowed, added to invoice, or collected as noted. Any claims for damage or shortage or loss in transit must be filed by Customer against the applicable carrier.

**6. Warranties:** Upon condition that Hoffman receives payment in full for all amounts owed, Hoffman (a) extends to Customer the manufacturer's warranty (a copy of which is available upon request) on any goods purchased, and said manufacturer's warranty is in lieu of any warranties contained in any applicable project contracts, conditions, plans, or specifications, and (b) warrants that the labor it provides will be performed in a workmanlike manner in accordance with industry standards. No claim for defective workmanship under this warranty may be brought unless Customer provides Hoffman with written notice of such defect within ninety (90) days from the date such services are performed. **HOFFMAN MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**7. Limitation of Remedy and Liability:** HOFFMAN'S MAXIMUM LIABILITY (HOWEVER ARISING) SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID HOFFMAN UNDER THIS AGREEMENT FOR ANY GOODS AND/OR SERVICES WHICH ARE THE CAUSE OF ANY LOSS OR DAMAGE TO CUSTOMER. HOFFMAN SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT OR PRODUCTION, LOST DATA, SPOILAGE, DELAY, OR INCREASED COST OF OPERATION. SAID EXCLUSIONS APPLY EVEN IF HOFFMAN HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SUCH POSSIBLE DAMAGES WERE REASONABLY FORESEEABLE. In addition to the foregoing, Hoffman's liability shall be further limited to only that proportion of the loss or damage suffered by Customer which is directly caused by, and the fault of, Hoffman. Hoffman shall have no responsibility for misuse of any system or goods by the Customer or third-parties, for the negligence of Customer or third-parties, for the design of the system, or for obsolescence, failure of, or damage to equipment caused by power interruptions, low voltage, burned out fuses, single phasing, phase reversal, low water pressure, vandalism or other deficiencies or causes beyond Hoffman's control. Customer acknowledges that Hoffman is not responsible for the design of goods or services purchased and did not participate in any project planning or design in connection with such goods or services.

**8. Indemnification / Insurance:** To the fullest extent permitted by law and except as provided in this Paragraph, Customer shall indemnify, hold harmless and defend Hoffman and its directors, officers, employees and agents from and against all claims, demands, liabilities, suits, judgments, awards, or expenses of any kind (including reasonable attorneys' fees and costs incurred defending such claims or demands regardless of whether they result in legal action or are prosecuted to final judgment or award), which result from any alleged damage, loss of and/or injury to property, or injury to and/or death of any person, arising from Customer's purchase or use of goods sold or services provided by Hoffman. Customer shall indemnify Hoffman against, without limitation, liability arising from any acts or omissions whether deemed negligent, accidental or intentional, which is caused, in part, by the active or passive negligence or other fault of Hoffman. To the fullest extent permitted by law, the obligations of defense and indemnification set forth herein shall be binding upon Customer no matter what the nature of the claim asserted may be (whether it be for negligence, warranty, strict liability, or otherwise) and shall be binding even if Hoffman is alleged or proven to have acted negligently; provided, however, that Customer shall have no obligation to provide indemnification to Hoffman if the claim asserted arises in negligence and is finally adjudicated to have arisen solely from the negligence of Hoffman. Customer shall also indemnify and hold harmless Hoffman from all liability for taxes owing in connection with its purchase of goods and/or services. The obligations and rights to indemnify herein shall not negate, abridge or reduce other such rights or obligations under law. Hoffman shall only be required to name Customer as an additional insured to the coverage types listed on Hoffman's standard Certificate of Insurance (attached as Exhibit A or available upon request). In no event does Hoffman waive any rights of subrogation.

**9. Claims Resolution / Governing Law:** All claims and disputes between Customer and Hoffman arising out of or relating to performance and/or breach of any agreement shall be decided by binding arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA). Notice of Demand for Arbitration must be filed in the regional office of the AAA in Charlotte, North Carolina, and the filing party must serve such Notice upon the other party in accordance with AAA rules. The procedural and substantive law of the State of North Carolina shall apply in and to all such arbitration proceedings, and Greensboro, North Carolina, shall be designated as the locale for any such proceedings. Both parties will have the right to conduct discovery in accordance with the Federal Rules of Civil Procedure within reasonable time limitations imposed by the AAA or the arbitrators. Any award arising from such proceedings shall be final and binding upon the parties and enforceable in accordance with the Federal Arbitration Act. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**10. Delays / Penalties / Force Majeure:** Delivery dates are approximate and not guaranteed. In no event and under no circumstances whatsoever, will Hoffman be liable for any damages or expenses caused by any failure or delay in making delivery of goods or in performing services hereunder. No penalty clause or liquidated damages of any kind (for delays or otherwise) apply to Hoffman unless pre-approved in writing by a Hoffman officer. Furthermore, in no event and under no circumstances whatsoever, will Hoffman be liable under this Agreement for any event of force majeure, an event or cause beyond the reasonable control of Hoffman.

**11. Customer Responsibility:** Customer shall provide Hoffman's personnel with a safe work environment in which to perform their services under this Agreement and provide Hoffman personnel with required utilities (water, electricity, compressed air, etc.) and reasonable access to Customer's facilities (elevators, receiving dock, etc.). Customer shall provide adequate service access space and shall remove any stock, fixtures, partitions, etc. necessary to perform the service. Customer shall promptly notify Hoffman of any unusual operating conditions.

**12. Hazards:** Hoffman is not responsible for the identification, detection, abatement, encapsulation or removal of hazardous substances, such as (without limitation) asbestos, products or materials containing asbestos, mold, fungi, mildew, or bacteria. In the event Hoffman encounters any such hazardous substance or condition in the course of its actions under this Agreement, Hoffman may suspend its work and remove its employees from the subject project, until any such hazardous substance or condition no longer exists. Hoffman shall receive an extension of time to complete its work and additional compensation for delays encountered as a result of any such situation. At all times now and in the future, Hoffman takes no responsibility for and makes no representations or warranties concerning any existing or future hazardous substance or condition (i.e. mold) or the remedy or prevention thereof. Furthermore, Customer has a duty to alert Hoffman of any known or likely potential hazards at any project site where Hoffman's representatives and affiliates may be present in connection with this Agreement.

**13. Refrigerant:** Customer shall be responsible for any expense in connection with the modification, removal, replacement or disposal of any refrigerant, as required by law.

**14. For Periodic Maintenance Contracts ("PMCs") (Section 14 only applies to PMCs):**

a. Price: Any PMC price may be adjusted by Hoffman at the end of each contract year upon at least thirty (30) days prior written notice. The PMC price is also predicated on Hoffman providing service during regular working hours on regular working days unless otherwise specified in writing by Hoffman. If Customer requests that work be performed other than during such regular working hours or days, Customer shall pay Hoffman any additional charges that arise, including the costs of premium / overtime pay.

b. Termination: Unless otherwise required in writing by Hoffman, any PMC may be terminated by either party as of the beginning of the next contract year upon at least thirty (30) days prior written notice to the other.

c. Covered Goods/Services: Only goods and/or services specifically enumerated in any PMC are covered by such PMC, and such PMC's terms govern what repairs or remedies, if any, are available.

**15. Termination:** Hoffman may terminate any of its obligations under this Agreement, if Customer fails to pay amounts owing to Hoffman when due, fails to perform or comply with any material provision of this Agreement, or otherwise breaches this Agreement, if such failure or breach is not cured within ten (10) business days after receipt of written notice from Hoffman. Upon termination by either Party, Customer shall be liable to Hoffman for all goods (including any goods specially ordered, but not delivered) and services provided and all damages and losses sustained by Hoffman, including lost profits.

**16. Equal Employment Opportunity / Affirmative Action Clause:** Hoffman and Customer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**17. Government Contracts / Disadvantaged Business Entities:** If Customer's purchase of services and/or goods is in any way connected to any federal, state, or local government project, which implicates or utilizes any Small, Minority or Disadvantaged Business incentives or qualifications (or other similar laws or regulations), Customer represents and certifies to Hoffman that Customer is performing a commercially useful function on such project.



NC Mechanical License # 28275, SC Mechanical Contractor # M113953, SC General Contractor # G120314  
TN Mechanical License # 71199, VA Contractor License # 2705164248  
P.O. Box 77319  
Greensboro, NC 27417  
24 Hour Service 855-761-HVAC(4822)  
Fax 855-327-4830

## QUOTE

Customer: Hughes Development Corporation Date: 10/15/2018  
Site Address: Church St. Greenville SC Quote #: BH101518-A  
Site Name: K-Mart Church Street Ref. WO Number: \_\_\_\_\_  
Quote Contact: Dan Walden  
Equipment Tag: Cooling Towers Model #: NC  
Manufacturer: Marley Serial #: 245793-P13EG-2004

Scope of work to be performed:

- |   |    |
|---|----|
| Provide all materials and labor to:<br>Remove existing deteriorated fill media and dispose into a container furnished by HMS.<br>2. Fabricate and install new fill support system.<br>3. Install new fill media complete with a separate layer of drift eliminators.<br>4. Clean work area. | 1. |
|---|----|

The Hoffman Mechanical Solutions, Inc. price for this work is: \$ 26,918.00

Price will remain firm for a period of 30 days. Hoffman Mechanical Solutions, Inc.'s normal working hours are from 8am to 5pm, Monday through Friday. Any work requested to be performed after normal working hours are subject to additional costs. On-site safety training and drug testing not included in quote unless noted. Payment terms shall be net 30 days after completion of project.

As a condition of this Proposal, all work performed by Hoffman Mechanical Solutions, Inc. shall be only in accordance with the Terms and Conditions, attached and incorporated herein by reference. In the event any terms of any other purchase order or project contract documents conflict with or add to the attached Terms and Conditions, those other terms are rejected by Hoffman Mechanical Solutions, Inc. Furthermore, this Proposal is contingent upon final approval of the Hoffman Credit Department and may be rescinded in the Company's sole discretion.

For North Carolina Only – Additional Taxes may apply. See NCDOR Form E-589Cl.

Quote Prepared By: Bob Hicks

Authorized By: \_\_\_\_\_

Customer P.O. \_\_\_\_\_

Date: \_\_\_\_\_

"Hoffman" shall mean Hoffman Mechanical Solutions, Inc. "Customer" shall mean the owner, contractor, or other party entering into this Agreement with Hoffman to purchase services and/or goods.

**1. Controlling Terms & Conditions:** This Agreement, upon Customer's acceptance, is limited to the terms and conditions stated herein, despite any additional or conflicting terms and conditions contained in any other purchase order, any other document presented by Customer, or any contract document between Customer and any third-party (i.e. an owner, other contractor, etc.), all of which additional or conflicting terms are hereby rejected by Hoffman. No waiver of, or modification to, these Terms and Conditions shall be valid, unless made in writing and signed by an authorized representative of Hoffman. The terms of any written proposal / quote made by Hoffman ("proposal") and these Terms and Conditions shall constitute the entire agreement of the parties.

**2. Acceptance:** Any Hoffman proposal expires if not accepted by Customer within thirty (30) days from the date of the proposal. Prices of goods are firm after acceptance provided the Customer releases the order within sixty (60) days of placing the order. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction. Customer is deemed to have accepted any Hoffman proposal, including these Terms and Conditions, when Customer either (a) receives and retains an acknowledgement from Hoffman without written objection for ten (10) days, (b) accepts delivery of all or any part of any goods ordered, (c) provides to Hoffman delivery / performance dates, shipping instructions, start-up instructions, or other instructions evidencing acceptance, (d) engages or directs Hoffman to begin performance of any services acquired, or (e) otherwise executes or assents to any proposal or these Terms and Conditions. If Customer accepts any proposal, without the addition of any other terms and conditions or any other Customer modification, Customer's order shall be deemed acceptance of the proposal subject solely to Hoffman's terms and conditions. If Customer's order is expressly conditioned upon Hoffman's acceptance or assent to terms and/or conditions other than those stated herein, return or acknowledgement of such order by Hoffman with Hoffman's Terms and Conditions attached or referenced serves as Hoffman's notice of objection to, and rejection of, Customer's terms and as Hoffman's counter-offer to provide goods and/or services in accordance with the proposal and Hoffman's Terms and Conditions. If thereafter Customer does not reject or object in writing to Hoffman within ten (10) days by written notice to Legal@hoffman-hoffman.com, Hoffman's counter-offer will be deemed accepted by Customer. In any event, Customer's acceptance of all or any part of any goods ordered will constitute Customer's acceptance of Hoffman's proposal subject to Hoffman's Terms and Conditions.

**3. Additional Services / Materials:** As work progresses, there may be a need for additional services or goods, which could not be anticipated at the time this Agreement was entered. Hoffman shall notify Customer of the description and price for such additional work or material, and if Customer authorizes Hoffman to proceed with the additional work or materials, the contract price and dates of completion shall be adjusted accordingly.

**4. Terms of Payment / Taxes:** Payment is due net thirty (30) days from date of Hoffman's invoice to Customer. Interest at the rate of 1 1/2% per month (or the highest interest rate allowed by applicable law, if lower) may be charged after the 30-day period until payment is received. Customer shall pay all costs of collection incurred by Hoffman including, but not limited to, reasonable attorneys' fees, collection fees and court costs. Hoffman may suspend all further services and transactions (regardless of their status) without liability if Customer's account is more than thirty (30) days past due or if Customer's credit, in the sole judgment of Hoffman, is impaired at any time. Partial invoices may be submitted for any portion of completed work and/or delivered materials. While risk of loss passes to Customer, Seller will have a purchase-money security interest in all goods (including any accessories and substitutions) purchased under this Agreement to secure payment in full of all amounts due Hoffman, and the underlying proposal, together with these Terms and Conditions, form a security agreement. (as defined by the UCC.) Customer shall keep all goods purchased under this Agreement free of all taxes and encumbrances, shall not remove said goods from their original installation point and shall not assign or transfer any interest in said goods until all payments due Hoffman have been made. The purchase-money security interest granted herein attaches upon Hoffman's acceptance or acknowledgment of this Agreement and Customer's receipt of said goods, but prior to installation. Customer will have no rights to set off against any amounts which become payable to Hoffman under this Agreement or otherwise. Customer is responsible to pay in full for the services and/or goods provided by Hoffman regardless of whether such goods or services are funded for Customer pursuant to any extraneous contract and/or by an applicable project owner or contractor. Notwithstanding any Customer form or document to the contrary, Hoffman shall not release any rights to make a lien and/or bond claim, or other claim for damages, in connection with its work or anticipated work (including the sale of goods and/or services) until Hoffman has obtained payment in full for such work and any damages. Unless otherwise agreed by Hoffman in writing, Customer shall pay to Hoffman, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable in connection with the services and/or goods furnished hereunder.

**5. Shipments / Claims:** Any shipment of goods is at Customer's risk, f.o.b. factory, or if shipped from another location, f.o.b. point of shipment, with charges either allowed, added to invoice, or collected as noted. Any claims for damage or shortage or loss in transit must be filed by Customer against the applicable carrier.

**6. Warranties:** Upon condition that Hoffman receives payment in full for all amounts owed, Hoffman (a) extends to Customer the manufacturer's warranty (a copy of which is available upon request) on any goods purchased, and said manufacturer's warranty is in lieu of any warranties contained in any applicable project contracts, conditions, plans, or specifications, and (b) warrants that the labor it provides will be performed in a workmanlike manner in accordance with industry standards. No claim for defective workmanship under this warranty may be brought unless Customer provides Hoffman with written notice of such defect within ninety (90) days from the date such services are performed. **HOFFMAN MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**7. Limitation of Remedy and Liability:** **HOFFMAN'S MAXIMUM LIABILITY (HOWEVER ARISING) SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID HOFFMAN UNDER THIS AGREEMENT FOR ANY GOODS AND/OR SERVICES WHICH ARE THE CAUSE OF ANY LOSS OR DAMAGE TO CUSTOMER. HOFFMAN SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT OR PRODUCTION, LOST DATA, SPOILAGE, DELAY, OR INCREASED COST OF OPERATION. SAID EXCLUSIONS APPLY EVEN IF HOFFMAN HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SUCH POSSIBLE DAMAGES WERE REASONABLY FORESEEABLE.** In addition to the foregoing, Hoffman's liability shall be further limited to only that proportion of the loss or damage suffered by Customer which is directly caused by, and the fault of, Hoffman. Hoffman shall have no responsibility for misuse of any system or goods by the Customer or third-parties, for the negligence of Customer or third-parties, for the design of the system, or for obsolescence, failure of, or damage to equipment caused by power interruptions, low voltage, burned out fuses, single phasing, phase reversal, low water pressure, vandalism or other deficiencies or causes beyond Hoffman's control. Customer acknowledges that Hoffman is not responsible for the design of goods or services purchased and did not participate in any project planning or design in connection with such goods or services.

**8. Indemnification / Insurance:** To the fullest extent permitted by law and except as provided in this Paragraph, Customer shall indemnify, hold harmless and defend Hoffman and its directors, officers, employees and agents from and against all claims, demands, liabilities, suits, judgments, awards, or expenses of any kind (including reasonable attorneys' fees and costs incurred defending such claims or demands regardless of whether they result in legal action or are prosecuted to final judgment or award), which result from any alleged damage, loss of and/or injury to property, or injury to and/or death of any person, arising from Customer's purchase or use of goods sold or services provided by Hoffman. Customer shall indemnify Hoffman against, without limitation, liability arising from any acts or omissions whether deemed negligent, accidental or intentional, which is caused, in part, by the active or passive negligence or other fault of Hoffman. To the fullest extent permitted by law, the obligations of defense and indemnification set forth herein shall be binding upon Customer no matter what the nature of the claim asserted may be (whether it be for negligence, warranty, strict liability, or otherwise) and shall be binding even if Hoffman is alleged or proven to have acted negligently; provided, however, that Customer shall have no obligation to provide indemnification to Hoffman if the claim asserted arises in negligence and is finally adjudicated to have arisen solely from the negligence of Hoffman. Hoffman shall also indemnify and hold harmless Hoffman from all liability for taxes owing in connection with its purchase of goods and/or services. The obligations and rights to indemnify herein shall not negate, abridge or reduce other such rights or obligations under law. Hoffman shall only be required to name Customer as an additional insured to the coverage types listed on Hoffman's standard Certificate of Insurance (attached as Exhibit A or available upon request). In no event does Hoffman waive any rights of subrogation.

**9. Claims Resolution / Governing Law:** All claims and disputes between Customer and Hoffman arising out of or relating to performance and/or breach of any agreement shall be decided by binding arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA). Notice of Demand for Arbitration must be filed in the regional office of the AAA in Charlotte, North Carolina, and the filing party must serve such Notice upon the other party in accordance with AAA rules. The procedural and substantive law of the State of North Carolina shall apply in and to all such arbitration proceedings, and Greensboro, North Carolina, shall be designated as the locale for any such proceedings. Both parties will have the right to conduct discovery in accordance with the Federal Rules of Civil Procedure within reasonable time limitations imposed by the AAA or the arbitrators. Any award arising from such proceedings shall be final and binding upon the parties and enforceable in accordance with the Federal Arbitration Act. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

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